

Jan 29, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LANCE A. THOMASON,

Plaintiff,

v.

STATE OF WASHINGTON,
COUNTY OF SPOKANE, SUPERIOR
COURTS, COUNTY, CITY, PUBLIC
SAFETY BUILDING, and
DETENTION SERVICES,

Defendants.

No. 2:19-cv-00285-SMJ

ORDER DISMISSING ACTION

Before the Court, without oral argument, are Plaintiff's First Amended Complaint, ECF No. 9, his Declaration, ECF No. 10, and a Motion and Declaration for Service of Summons by Publication, ECF No. 11. Plaintiff is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

By Order filed October 23, 2019, the Court advised Plaintiff, a pretrial detainee at the Spokane County Detention Services, of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty days. ECF No. 8. The Court cautioned Plaintiff that if he failed to comply with the directives in the Order, the Court would dismiss his complaint seeking monetary damages for

1 alleged double jeopardy violations. Liberally construing the First Amended
2 Complaint in the light most favorable to Plaintiff, the Court finds that it fails to cure
3 the deficiencies of the initial complaint.

4 Specifically, Plaintiff fails to name as Defendants persons who are amenable
5 to suit under 42 U.S.C. § 1983. *See Will v. Mich. Dept. of State Police*, 491 U.S. 58,
6 70–71 (1989); *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001); *Greater Los*
7 *Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987)
8 (concluding a suit against a superior court is a suit against a state, which is barred
9 by Eleventh Amendment immunity); *cf. Hyland v. Wonder*, 117 F.3d 405, 413 (9th
10 Cir. 1997) (describing superior court judges as state agents or employees); *see also*
11 *Nolan v. Snohomish County*, 802 P.2d 792, 796 (Wash. Ct. App. 1990) (“[I]n a legal
12 action involving a county, the county itself is the only legal entity capable of suing
13 and being sued.”). He also failed to allege facts from which the Court could
14 plausibly infer that the County of Spokane engaged in a pattern or practice that
15 resulted in the deprivation of his constitutional rights. *Monell v. N.Y.C. Dep’t of*
16 *Soc. Servs.*, 436 U.S. 658, 690 (1978).

17 Furthermore, the *Younger* abstention doctrine forbids federal courts from
18 enjoining pending state criminal proceedings, absent extraordinary circumstances
19 not presented here. *See Younger v. Harris*, 401 U.S. 37, 53-54 (1971); *Kenneally v.*
20 *Lungren*, 967 F.2d 329, 331 (9th Cir. 1992). For the reasons set forth above and in


1 the Order to Amend or Voluntarily Dismiss, ECF No. 8, this action is dismissed for
2 failure to state a claim upon which relief may be granted under 28 U.S.C.
3 §§ 1915A(b)(1) and 1915(e)(2).

4 Accordingly, **IT IS HEREBY ORDERED:**

- 5 **1.** This action is **DISMISSED WITHOUT PREJUDICE** to Plaintiff
6 pursuing available state court remedies.
- 7 **2.** The Motion and Declaration for Service of Summons by Publication,
8 **ECF No. 11**, is **DENIED AS MOOT**.
- 9 **3.** Based on the Court's reading of *Washington v. Los Angeles County*
10 *Sheriff's Department*, 833 F.3d 1048 (9th Cir. 2016), this dismissal
11 will NOT count as a "strike" under 28 U.S.C. § 1915(g).
- 12 **4.** The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**
13 this file.
- 14 **5.** The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any
15 appeal of this Order would not be taken in good faith.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
17 provide a copy to *pro se* Plaintiff at his last known address.

18 **DATED** this 29th day of January 2020.

19 
20 **SALVADOR MENDOZA, JR.**
United States District Judge